

APPEAL NO. 170774  
FILED MAY 22, 2017

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on February 21, 2017, in (city), Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issue by deciding that the compensable injury of ((date of injury)), does not extend to C3-4 and C5-6 disc protrusions and C7 left radiculopathy.

The appellant (claimant) appealed the hearing officer's determination as being contrary to the preponderance of the evidence.

The respondent (self-insured) responded, urging affirmance.

DECISION

Reversed and remanded.

The claimant, a correctional officer, testified that he injured his left shoulder on ((date of injury)), while attempting to subdue a combative inmate. The claimant sought medical treatment with (Dr. W) on October 7, 2015, the day following the date of injury. The parties stipulated that the claimant sustained a compensable injury on ((date of injury)), and the claimant testified that he underwent arthroscopic repair of the injury to his left shoulder.

Results of cervical MRI testing on June 7, 2016, were interpreted as revealing disc protrusions at the C3-4 and C5-6 levels. Results of EMG/NCS testing conducted on April 27, 2016, were reported as suggestive of a left C7 radiculopathy.

In the Discussion section of her decision, the hearing officer stated:

The medical records from [Dr. W] indicate that [the] [c]laimant's initial complaints were limited to the left shoulder. There was no mention of any neck complaints. . . .

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[Dr. W] does not explain the 6-month delay between the date of injury and the initial complaints of cervical pain.

In evidence, however, are Dr. W's medical records which reflect that on October 7, 2015, the day following the date of the compensable injury, the claimant listed neck pain on the Patient Questionnaire. In his report of the office visit on October 7, 2015, Dr. W noted complaints of neck pain in his discussion of the history of the claimant's injury of ((date of injury)), and obtained X-rays of the claimant's cervical spine. Given a review of the evidence admitted, the hearing officer's statement indicating that the claimant did not complain of cervical pain for 6 months following the date of injury constitutes a material misstatement of fact. Accordingly, we reverse the hearing officer's determination that the compensable injury of ((date of injury)), does not extend to C3-4 and C5-6 disc protrusions and C7 left radiculopathy and we remand the issue of extent of injury to the hearing officer for further action consistent with this decision.

### **REMAND INSTRUCTIONS**

On remand the hearing officer is to consider all of the evidence, including Dr. W's records of October 7, 2015, make findings of fact, and render conclusions of law regarding whether the compensable injury of ((date of injury)), extends to C3-4 and C5-6 disc protrusions and C7 left radiculopathy consistent with this decision.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Department of Insurance, Division of Workers' Compensation, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See Appeals Panel Decision 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **HARRIS COUNTY (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**CONFIDENTIAL**

Tex. Labor Code § 402.083

**ED EMMETT, COUNTY JUDGE  
1001 PRESTON, SUITE 911  
HOUSTON, TEXAS 77002.**

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K. Eugene Kraft  
Appeals Judge

CONCUR:

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Carisa Space-Beam  
Appeals Judge

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Margaret L. Turner  
Appeals Judge